

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* LOWRY, Minors.

UNPUBLISHED

January 23, 2018

No. 339017

Wayne Circuit Court

Family Division

LC No. 16-523821-NA

---

Before: CAMERON, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her two minor children, FLL and LML, pursuant to MCL 712A.19b(3)(g) (parent failed to provide proper care or custody and no reasonable expectation parent will provide proper care or custody within a reasonable time); (i) (parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse); and (j) (reasonable likelihood of harm to child if returned to the home). We affirm.

The children in this matter came to the attention of the court due to allegations that respondent mother and the children's father were involved in a physically abusive relationship, that mother was a chronic drug user and did not have suitable housing for the children, and that respondent mother further had unresolved mental health issues and had three other children removed from her care due to her chronic drug use. Respondent mother had had a criminal history and had recently been arrested for possession and use of a controlled substance; the children were in her vehicle at the time of her arrest. The children were removed from respondent mother's care on November 22, 2016. Termination of respondent mother's parental rights was requested in the initial petition. At the conclusion of a bench trial, the trial court found clear and convincing evidence to support termination of respondent mother's parental rights. A "best interests" hearing followed, at the conclusion of which the trial court found that termination of respondent mother's parental rights was in the children's best interests.

Respondent mother argues on appeal that the trial court committed a clear error when it found clear and convincing evidence to support termination of her parental rights where she was not given the opportunity to work on a treatment plan, and that the best interests of FLL and LML were not considered, because they were strongly bonded to respondent mother. We disagree.

This Court reviews for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264

Mich App 286, 296; 690 NW2d 505 (2004). The trial court's best-interest decision is also reviewed for clear error. *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 637; 853 NW2d 459 (2014). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

To terminate parental rights, the trial court must first find by clear and convincing evidence that the petitioner has established a statutory ground for termination. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Only one statutory ground need be established to support termination of respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Termination is proper pursuant to MCL 712A.19b(3)(g) when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Additionally, termination under MCL 712A.19b(3)(j) is appropriate when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

The record supports the referee's conclusion that respondent mother failed to provide proper care for FLL and LML. Respondent mother maintained a pattern of engaging in physically abusive relationships since 2000, with at least four different men including the children's father. Respondent mother also had a significant history of substance abuse. Although she admitted to last using cocaine in May of 2016, she was arrested for possession of crack cocaine on October 4, 2016, and she tested positive for cocaine on September 19, 2016, on November 10, 2016, and on June 14, 2017, following the combined adjudication and dispositional hearing. She also appeared at a team meeting apparently under the influence and was living in temporary housing of a friend. Finally, although respondent mother pledged that she would not enter into another codependent relationship, she saw no issue maintaining contact with father or with her physically abusive ex-husband HP, or depending on father or HP for transportation and support.

These circumstances show that respondent mother could not provide proper care or custody for FLL and LML and was not reasonably likely to do so within a reasonable time considering the children's ages. See *In re Frey*, 297 Mich App 242, 246-247; 824 NW2d 569 (2012) (affirming termination under MCL 712A.19b(3)(g) because the parents demonstrated an inability to stay sober and to avoid criminal activity). These same circumstances establish that the trial court did not commit a clear error by finding a reasonable likelihood of harm to FLL and LML if placed with respondent mother. See *In re Utrera*, 281 Mich App 1, 24-26; 761 NW2d 253 (2008) (concluding that respondent's instability, and a continuing lack of judgment, insight, and empathy for the child sufficiently supported termination pursuant to MCL 712A.19b(3)(j)).

Furthermore, termination of parental rights is proper under MCL 712A.19b(3)(i) where "[p]arental rights to [one] or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." The requirements under subsection (3)(i) are two-fold: (1) parental rights to one or more siblings must have been terminated due to serious and chronic neglect, and (2) prior

attempts to rehabilitate the parent must have been unsuccessful. *In re Gach*, 315 Mich App 83, 94; 889 NW2d 707 (2016).

Here, the record showed that respondent mother's parental rights to her daughter EDP were terminated in September 2008, pursuant to MCL 712A.2(b) and that the circumstances leading up to that proceeding involved respondent mother's persistent use of crack cocaine and an escalating pattern of domestic violence. Respondent mother argues that this termination was a voluntary relinquishment of her parental rights; however, the lower court record does not indicate that respondent mother voluntarily released EDP under the Michigan Adoption Code, MCL 710.21 *et seq.*, but that her rights regarding EDP were involuntarily terminated.

Additionally, the record indicates that prior attempts to rehabilitate respondent mother were unsuccessful. Respondent mother was offered, and successfully completed, services as part of a treatment plan related to the 2007 allegations, which had led to the termination of her parental rights to EDP. On October 17, 2016, respondent mother was offered Families First services, which she successfully completed. Respondent mother sought help from several different types of domestic violence counseling services throughout the years. Respondent mother received weekly visits from Lincoln Behavioral Services infant mental health therapist Dana Carlton for over two years, and during the combined adjudication and dispositional hearing, she was enrolled in a substance abuse program that met three times per week. Despite all of these services, a number of which respondent mother successfully completed, respondent mother could not show that she had been successfully rehabilitated because she continued to engage with her former partners who had been physically abusive, and she continued to use cocaine.

Respondent mother argues that because she was the victim of father's physical abuse, she should have been allowed the same opportunity as father to complete a treatment plan. However, father was given the opportunity to complete a treatment plan because it was determined that services were never offered to him. Respondent mother cannot say the same. Moreover, respondent mother gives no authority to support her premise that these statutory grounds do not apply to her because of her status as a victim of domestic violence. Moreover, despite respondent mother's assertion of a willingness to engage in a treatment plan and her references to completion of prior services, it cannot be overlooked that she had been provided with a multitude of services in recent history and did not benefit from those services. A parent's participation in services is not enough; he or she must also show that he or she actually benefitted from the services provided. See, e.g., *In re White*, 303 Mich App 701.

Accordingly, the trial court did not commit a clear error when it found by clear and convincing evidence statutory grounds to terminate respondent mother's parental rights pursuant to MCL 712A.19b(3)(g), (i), and (j).

Respondent mother also argues that the best interests of FLL and LML were not properly considered, because they were strongly bonded to respondent mother and a treatment plan could have prevented termination of her parental rights. We disagree.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in

the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In considering whether termination of parental rights is in the best interests of a child, a court should consider a variety of factors. *In re White*, 303 Mich App at 713-714. These factors include the existence of a bond between the child and the parent, the parent's ability to parent the child, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *Id.* A child's placement with relatives weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

Although the record supports respondent mother's assertion that she was strongly bonded with FLL and LML, no other factors weigh in her favor. Respondent mother's persistent substance abuse and engagement in relationships of domestic violence are not compatible with FLL's and LML's needs for permanency and stability. Nor could respondent mother display compliance with her service plan because her drug screens during the CPS investigation and lower court proceedings consistently tested positive for cocaine, and she remained dependent on her former partners who had been physically abusive. Although the father's parental rights were not terminated, this did not weigh against maintaining respondent mother's parental rights because her historically codependent and violent relationship with father made coparenting impossible. Accordingly, respondent mother's argument that the best interests of FLL and LML were not properly considered is without merit.

Respondent mother further argues that the trial court committed a clear error when FLL and LML were removed permanently from her custody, on the basis of anticipatory neglect, when the circumstances in this case are not similar to the circumstances nearly 10 years ago that resulted in the 2008 termination of her parental rights to EDP. We disagree.

Under the doctrine of anticipatory neglect, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In the Matter of LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973); see also *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001).

The referee considered the circumstances surrounding the 2008 termination of respondent mother's parental rights to EDP, and clear parallels to the present case emerged: respondent mother's cocaine use, domestic violence, and her failure to benefit from services provided to her. However, the referee did not rely on the doctrine of anticipatory neglect to conclude that termination was appropriate. Rather, the referee explained that further services would not benefit respondent mother because she had not benefitted from services that were provided to her in 2007, or from services provided to her since then by Families First, First Step, or from two years of weekly visits from a caseworker from infant mental health services, or from the substance abuse program that met three times per week which respondent mother was in at the time of the combined adjudication and dispositional hearings.

Respondent mother argues that she was not given an opportunity to "prove herself to be a suitable parent." We construe respondent mother's argument to mean that because her parental rights were terminated, as opposed to receiving a treatment plan, reasonable efforts were not made to reunify respondent mother with FLL and LML. We disagree.

Before a trial court may contemplate termination of a parent's parental rights, the petitioner must make reasonable efforts to reunite the family. MCL 712A.19a(2). Services are not required where petitioner requests termination in the initial petition because the permanency plan is termination, not reunification. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Here, petitioner sought termination of respondent mother's parental rights in the initial petition. Therefore, the permanency plan was termination, not reunification and petitioner was not required to offer respondent mother additional services.

Affirmed.

/s/ Thomas C. Cameron  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher